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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Tehama)

GARY A.,

Petitioner,

v.

SUPERIOR COURT OF TEHAMA COUNTY,

Respondent;

CHILD PROTECTIVE SERVICES et al.,

Real Parties in Interest.

C044893

(Super. Ct. Nos. J09548,
J09549, J09550)

Petitioner Gary A., father of the minors, seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court made at the 12-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing (undesignated

section references are to the Welfare and Institutions Code). We shall deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Social Services (DSS) placed the minors, Mec., 14, Mar., 12, Per., five, and Med., three, in foster care in June 2001, pursuant to a voluntary services plan for their mother. However, the mother failed to comply with the voluntary services program and was arrested following a domestic violence incident in May 2002. While in foster care, Mec. and Mar. disclosed a history of physical and emotional abuse at the hands of petitioner who was living in Arizona. They also reported petitioner had sexually molested Mar. several years earlier when the family lived in Oregon. The mother stated she had been subjected to ongoing molestation and physical abuse by petitioner since she was a child and that she and her mother were pregnant by petitioner at the same time. The mother had taken the minors and fled from petitioner's physical and emotional abuse twice before.

In August 2001, petitioner came to California and attempted to take his children back to Arizona. When questioned by the social worker, he stated his sexual liaison with the mother, who was also his stepdaughter, began when she was 15 and was a mutual thing. He denied molesting Mar., insisting she had made up the story to get attention at a shelter in Arizona. DSS filed dependency petitions alleging the mother's arrest and petitioner's physical and sexual abuse of the minors and of the

mother. The petitions sought to detain the minors pending further investigation.

At the jurisdictional hearing in October 2001, apparently as a result of an agreement, the mother and petitioner admitted amended allegations that, due to her arrest, the mother failed to provide for the minors' care and that petitioner had ongoing sexual relations with the mother since she was 16. The court advised petitioner that, before the minors could be placed with him, an evaluation from Arizona pursuant to the Interstate Compact on the Placement of Children (ICPC) would be required. (Cal. Rules of Court, rule 1428.) Petitioner indicated he would be moving soon.

Shortly thereafter, DSS filed subsequent petitions (§ 342) which again alleged past physical, sexual, and emotional abuse of the minors by petitioner. The detention report for the subsequent petitions stated the minors were afraid to discuss petitioner's past abuse due to petitioner's prior violent behavior and threats. The mother recanted her prior allegations that petitioner had abused her as a child, and said she wanted to "sign [her] children over" to petitioner. The social worker described the mother's actions as an attempt to protect herself from petitioner who was very controlling and aggressive. The social worker stated both the mother and petitioner put pressure on the minors to "change" their allegations of abuse.

The dispositional report for the original petition stated Mec. and Mar. feared petitioner and were concerned that Per. and

Med., who had not yet been abused, would be at risk if returned to him. The report recommended services for both parents. The court adopted the recommendation in November 2001.

After the dispositional hearing, petitioner moved from Arizona to Oregon. He did not initially move to California because he was unable to find suitable housing. Following his move to Oregon, petitioner made no effort to relocate to California.

The subsequent petition was still pending and, in January 2002, petitioner agreed to waive reunification services if DSS dropped the petition. Petitioner signed a waiver and the subsequent petition was dismissed without prejudice.

The mother participated in services and the youngest minors were briefly returned to her care until she again endangered their safety, necessitating a second removal in July 2002. DSS continued to recommend reunification.

In August 2002, petitioner filed a petition for modification seeking to withdraw his waiver of services and participate in reunification. The court accepted the withdrawal and reinstated the previously dismissed subsequent petitions.

DSS initially recommended denial of services to petitioner based upon his history of abuse and the damage the minors suffered in his care. Reports in the fall of 2002 indicated that the turmoil in the dependency proceedings, the mother's manipulative behavior in visits, and her stated desire that the minors should be placed with petitioner instead of her all had

severe negative effects on all the minors. DSS recommended termination of the mother's reunification services.

Pursuant to an agreement at the hearing on the reinstated subsequent petitions, petitioner admitted disciplining the minors to the point of bruising them. In exchange, all other allegations were dismissed. The dispositional report recommended services for petitioner and stated that an ICPC evaluation had been initiated with Oregon. The social worker continued to be concerned about the sexual abuse allegations, noting that the minors' accounts had been consistent in three different states. DSS recommended petitioner participate in parenting classes, counseling for sexual abuse, physical abuse, domestic violence and anger management as well as a psychological evaluation and visitation. The plan ultimately adopted in December 2002 did not address sexual abuse counseling, although the social worker did continue to discuss the issue with petitioner. The plan also required two psychological evaluations.

A status review report filed in June 2003 stated petitioner submitted to a psychological evaluation in April 2003 after first insisting it was not a part of his case plan. According to the evaluation, petitioner had intense, unresolved, underlying anger which he had learned to suppress but continued to struggle with. The review report stated that, although petitioner was participating in parenting classes, his instructor found him hard to evaluate. Petitioner also was

continuing his anger management classes. During discussions of his criminal background with DSS, petitioner admitted he had a sexual relationship with a 15-year-old girl in 1973 but was convicted only of contributing to the delinquency of a minor.

The Oregon social worker began the evaluation of petitioner's home for the ICPC report in January 2003. By April 2003, the Oregon social worker told DSS she did not think the ICPC could be approved and stated that petitioner had admitted he had sex with the mother prior to her being 17 with her mother's consent. The DSS social worker discussed with petitioner the need to complete a psychosexual evaluation which would include both a polygraph and plethysmograph for the ICPC approval. Petitioner resisted the referrals to appropriate providers of the necessary testing. In mid-May 2003, the Oregon social worker informed DSS that the ICPC was being denied due to petitioner's sexual relationship with the mother when she was a minor and that the social worker had discussed this with petitioner. The Oregon social worker further stated their case would be closed in 30 days, regardless of whether petitioner had completed a psychosexual evaluation, since the evaluation was only necessary if California dismissed its case despite denial of the ICPC and placed the minors with petitioner. In that case, Oregon would re-detain the minors unless a completed evaluation concluded petitioner was not a risk to the minors. The Oregon social worker further informed DSS that petitioner had not returned home study forms and that he had not provided

his criminal background information, stating only that he should be forgiven for his crimes.

Petitioner regularly visited the minors, although he initially resisted visitation rules and occasionally discussed inappropriate matters with the minors. Over time, the visits were less chaotic and petitioner was more compliant with the rules. The minors reacted negatively to the stress of visits and to their overall lack of stability with physical symptoms, behavioral problems, and declining school performance. According to a foster agency report in June 2003, neither Med. nor Per. talked about petitioner or asked to see or to live with him nor had visits enhanced their relationship with him. In March 2003, Mec. began to avoid visits with petitioner. Petitioner cancelled visits in March and May 2003. From the beginning of June 2003 through August 21, 2003, petitioner had only one visit with the minors, having cancelled five other scheduled visits. Petitioner was 15 minutes late for the one visit which did occur on July 10, 2003. During that visit, petitioner focused his attention on Mar. to the exclusion of the other two girls, did not demonstrate adequate parenting skills, and was unable to implement parenting suggestions of the visit supervisor or to provide structure and discipline for the minors.

A psychological evaluation in July 2003 stated both Per. and Med. had difficulty behaving consistently due to their history of instability and both would require consistent

training to develop boundaries, self-control, communication skills, empathy, and decisionmaking skills. The evaluator also noted ongoing controlling comments by petitioner in visits which strongly impacted Per. who also showed little bonding to male figures. A separate evaluation of the needs of Mec. and Mar. stated that it was clear all four minors had been subjected to "serious systematic emotional abuse" by petitioner. Further, the three oldest girls had experienced and witnessed physical abuse and domestic violence. The evaluator concluded visits had undermined the minors' sense of safety and Mec. and Mar. feared petitioner would kill them. The evaluator recommended termination of reunification efforts.

Prior to the review hearing, the social worker provided petitioner's social sexual assessment and polygraph results from Oregon service providers. The polygraph results indicated petitioner was truthful when he denied he had physical sexual contact with Mar. but was deceptive when asked if, after age 35, he had sexual contact with a minor other than the minor's mother. The report indicated that, while petitioner had a relatively low risk of re-offending, he had minimized his past conduct and had a deceptive response on the polygraph. The evaluator stated that, if the family were to be reunited, these matters were of concern and petitioner could benefit from a sex offender treatment program.

At the hearing, the court indicated that the hearing was a permanency hearing since, for all practical purposes, petitioner

had 12 months of services; thus, the issue was whether the court could make the appropriate findings to permit extension of services to 18 months. The social worker testified she changed her mind about offering further services because she had received the ICPC report from Oregon refusing to accept transfer of the case because of petitioner's history. The results of the social sexual report and the psychological evaluations of the minors also concerned the social worker and led her to believe the minors would not be safe with petitioner. The social worker stated petitioner had completed his parenting classes, was nearly finished with his anger management sessions and had attended counseling. She noted he had not visited the minors recently but recognized he had transportation problems. Despite the progress petitioner had made on his case plan, the social worker recommended termination of services. The social worker stated that even if petitioner completed all suggested counseling, the minors could not be placed with him because Oregon declined to accept transfer of the case.

Petitioner waived services as to his oldest daughter, Mec. Petitioner testified he moved to Oregon from Arizona in December 2001. He stated that, at the time, he was unable to find housing locally. He admitted he had not tried to move to California since relocating to Oregon. He stated he would not participate in sex offender therapy since it would require him to admit he was a sex offender, which he was not. Petitioner

agreed that the minor's mother was 17 when she gave birth to their first child.

The court concluded that petitioner had made progress in services but was still emotionally threatening to the minors. Further, petitioner had long-standing problems which placed the minors at risk if they were to be returned to him. The court further observed that, despite his denials, petitioner did have a history of sexual abuse of minors. The court specifically disbelieved petitioner's claim that he was unable to find any appropriate local housing. Recognizing petitioner was entitled to live where he chose and disregarding speculation of what could occur should petitioner move to California, the court found that, as long as petitioner chose to live in Oregon, a state that refused to accept transfer of the case, the minors could not be returned to him and the court was unable to make findings that would permit an extension of services to 18 months.

DISCUSSION

Petitioner argues the juvenile court should have extended services to 18 months because he had complied with the initial services plan. He contends that, while the initial plan and related services were adequate, conditions for placement mandated by the State of Oregon where he lived constituted a change of plan which prompted the Tehama County social worker to recommend denial of further services. Petitioner insists he was unaware Oregon was going to decline interstate placement until

it was too late for him to respond and that new services should have been offered to him so that he would have an opportunity to move to California in order to reunify with the minors.

The record supports the juvenile court's decision to deny further services.

In order to extend services to the statutory limit of 18 months, the court had to find that there was a "substantial probability" the minors would be returned to petitioner's custody and safely maintained in his home within the extended period. (§ 366.21, subd. (g)(1).) To make that finding, the court had to find petitioner regularly and consistently visited the minors, made significant progress in resolving the problems that led to removal, demonstrated the capacity to complete the objectives of the plan and to provide for the minors' safety, protection, physical, and emotional well-being and special needs. (*Ibid.*)

The primary reason the juvenile court could not make findings to support an extension of services was that petitioner lived in Oregon and that state refused to accept a transfer of the case. The Oregon social worker made it clear to petitioner as early as May 2003 that transfer under the ICPC would be denied. Petitioner made no effort to move either to California or to some other state which would have accepted the transfer. Further, petitioner did not submit to the psychosexual evaluation until after he was aware of Oregon's decision to deny the transfer even though the Oregon social worker told him that

the evaluation would have no impact on the decision to deny transfer, but would only be of value if it concluded the minors would be safe with petitioner and California dismissed its case, placing the minors with petitioner. Neither of these things occurred. Thus, the additional conditions suggested by Oregon had no impact on the ultimate decision to deny an extension of services. There was no "moving target" of required services or plan elements. The Oregon requirements and their effects were explained early on. It was not a failure of services, but petitioner's own characteristics and choice to remain in a state that refused to permit transfer of the dependency, which prevented placement.

Moreover, the problems with petitioner at the time of the review hearing were unchanged from those at the beginning of the dependency. He had a history of sexual abuse with minors which he minimized in various ways. He consistently manipulated and attempted to control not only the minors and the social workers but also the mother who was twice convinced to try to relinquish custody of the children to petitioner, a man from whom she had repeatedly tried to protect them. Petitioner moved in and out of the dependency proceedings as suited him, visiting the minors irregularly, and contributing to their ongoing emotional upheaval. Despite the parenting classes he completed, the visitation records continued to reflect inadequate parenting as well as manipulative behavior. Even had Oregon permitted the transfer of the case, the juvenile court could not have made the

necessary findings to extend services for petitioner to 18 months.

DISPOSITION

The petition is denied.

SIMS, J.

We concur:

SCOTLAND, P.J.

BUTZ, J.